



## Appeals and Litigation



# Agenda

- Appeals Overview
- Litigation Overview
- Terminology
- Definitions
- Review



# Appeals Overview

- Appeals submitted to OIP
  - Instructions for submitting appeals included in request response
- Generally based on dissatisfaction with response to FOIA request
- OIP Attorneys review and
  - Affirm - agree
  - Remand - reopen and try again



# Appeals Overview

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~~SBU~~ Sensitive but Unclassified





# Appeals Overview

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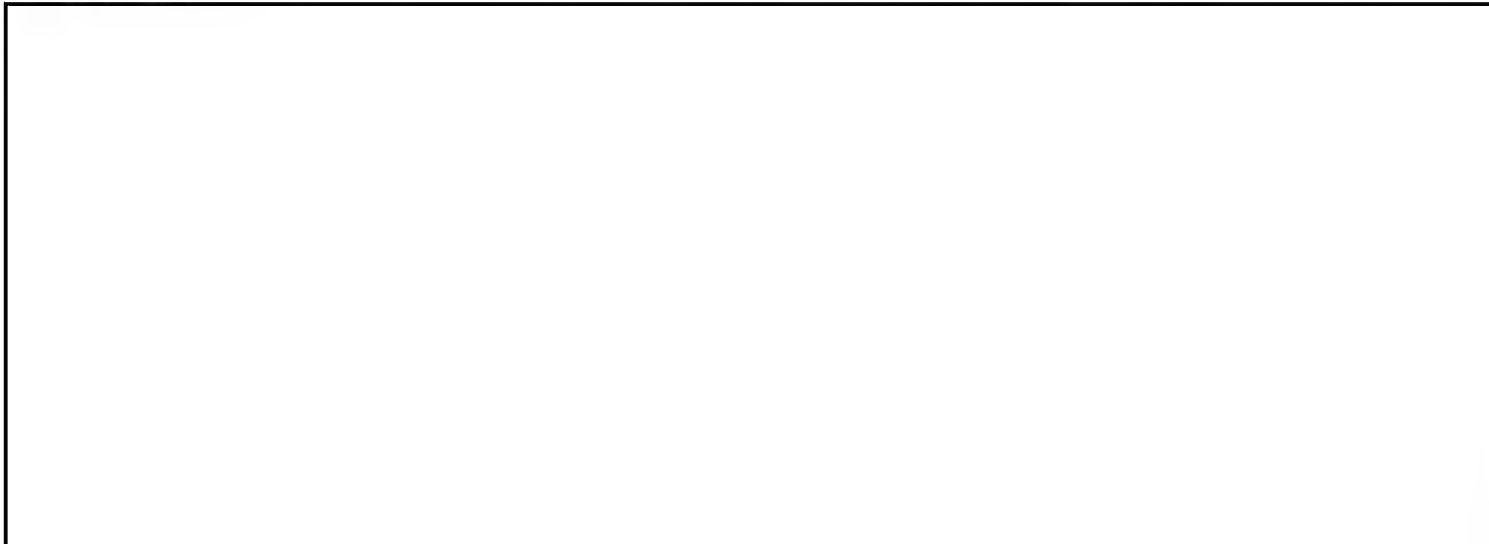
# Agenda

- Appeals Overview
- Appeals Screens
- **Litigation Overview**
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# Litigation Overview

- Purpose: to provide a general overview of FOIA litigation considerations
- Lawsuits can be filed for almost any reason



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# Litigation Overview

- FOIPA complaints are filed in district court of
  - District where complainant resides, or
  - District where complainant has principal place of business, or
  - District where agency records are situated, or
  - District of Columbia
- Lawsuits can be filed for any reason, however...





# Litigation Overview

- Judicial remedies can only be invoked if an agency has:
  - Improperly
  - Withheld
  - Agency Records
- Complaints will generally be dismissed without allegation of violation of the above three components



# Litigation Overview

- Statute of Limitations:
  - Six years after plaintiff has 'constructively' exhausted administrative remedies
- Requesters must 'exhaust administrative remedies' prior to filing a complaint
  - Means an agency needs an opportunity to exercise its discretion and expertise on request and make a record to support its decision
  - As you know, agencies have 20 days to respond to a perfected request



# Litigation Overview

- After exhausting administrative remedies, requester can seek immediate judicial review
  - Right to immediate judicial review lapses if an agency responds to request at any time before requester's FOIA suit is filed
  - Requester must then administratively appeal a denial and wait at least 20 working days for agency to adjudicate appeal before starting litigation
- If agency response fails to give notice of right to file administrative appeal:
  - Requester's exhaustion obligation may be excused



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# Terminology

- Stay of Proceedings: a court-ordered short-term delay in judicial proceedings
  - Requester files suit in court
    - Court may retain jurisdiction over case by issuing stay of proceedings, while allowing agency additional time to complete processing of request
- Often referred to as Open America



# Terminology

- Open America based on Open America v. Watergate Special Prosecution Force
  - Was determined that 'exceptional circumstances' may exist when an agency is deluged with excessive requests and existing resources are inadequate to deal with volume within time limits



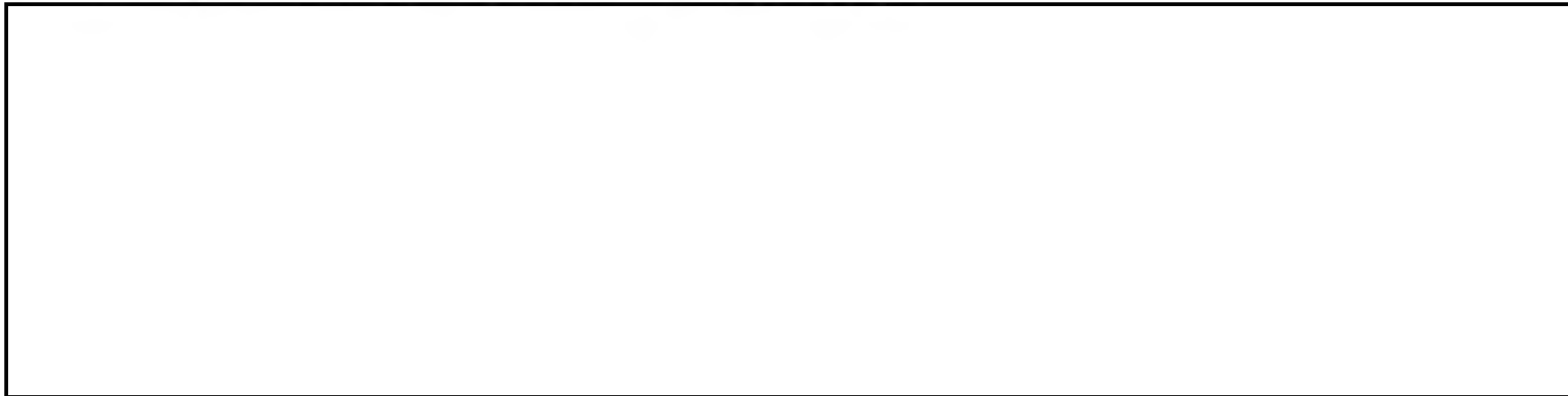
# Terminology

- Adequacy of Search
  - Sometimes lawsuits will challenge nature and extent of search for responsive documents
  - Agency must show good-faith effort to conduct search for requested records using methods that would be reasonably expected to product requested info
  - Searching through agency indices containing records where requester is subject of record has been held to be adequate



# Terminology

- Adequacy of Search (cont)



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# Terminology

- Attorney Fees and Costs
  - Reasonable attorney fees and litigation costs can be awarded if plaintiff has substantially prevailed



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# Definitions



## "Discovery"

Process whereby parties gain info from their adversaries or from 3rd parties concerning matters at issue in litigation



## "Pleading"

Every legal document filed in a lawsuit, petition, motion and/or hearing, including complaint, petition, answer, demurrer, motion, declaration and memorandum of points and authorities (written argument citing precedents and statutes)

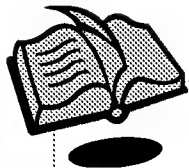


# Definitions



## "Plaintiff"

The party who initiates a lawsuit by filing a complaint



## "Summary Judgment"

A court order ruling that no factual issues remain to be tried and therefore a cause of action or all causes of action in a complaint can be decided upon certain facts without trial





# Definitions



## "Complaint"

First document filed with the court by a person or entity claiming legal rights against another



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# Review

1. How do you become aware of appeals assigned to you?
2. What are the courts that a FOIPA complaint can be filed in?
3. What happens when a lawsuit has been filed but there are no improperly withheld agency records?
4. What is the Statute of Limitations for filing a complaint?